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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/894,065
Filing Date: June 28, 2001
Appellant(s): KOELLE ET AL.

Betty Formby (Reg. No. 36,536)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/28/2006 appealing from the Office action mailed 12/05/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

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No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,3-10,12-14,16-21 and 23-31 are rejected under 35 U.S.C §102(e) to McCormack et al. (McCormack). The rejection is set forth in the final Office Action mailed 12/5/2005. Examiner has parsed each limitation of the independent claims in the application and mapped it to the respective prior art reference(s) in the table below.

Claims 1,3-10,12-14,16-21 and 23-31 are rejected under 35 U.S.C §102(e) to

McCormack et al. (McCormack):

Claim Number(s)	Claim mapping using prior art to McCormack	Examiner Comments
Claims 1,9,14 and 21 (grouped because of similarity)	...A method (Figs. 4-5), data processing system (Fig. 6) and computer program product (Fig. 1-6)	
	... a bus system (Fig. 6, shows inter/intrasystem bus schemes) a communication unit connected to the bus system (Fig. 6, element 618, the communication interface allows system, element 600, to collect information about other devices on the network; Column 17, lines 49-56)	
	... a storage device connected to the bus system (Fig. 6, elements 606, 608, 610), wherein the storage device includes a set of instructions (Column 17, "...processor 604 executing one or more sequences of one or more instructions contained in main memory 606. Such instructions may be read into main memory 606 from another computer-readable	

	<i>medium, such as storage device 610...")</i>	
	<p>... and a processing unit (<i>Fig. 6, element 604</i>) connected to the bus system, wherein the processing unit executes the set of instructions to maintain a set of attributes relating to elements in a data processing system (<i>Fig. 3, attribute information is shown in table 311 including the type of device, IOS version, etc</i>), wherein a desired combination of attributes (<i>Fig. 4, particularly element 412, McCormack discloses using a filter to filter out a desired group of devices with attributes specified in the filter; Column 15, lines 25-35 disclose user specifying attributes/criteria to query</i>) in the a plurality of possible combination of attributes is used to create respective group of devices containing the respective desired combination of the attributes (<i>Fig. 3 shows an example of the various types of attributes one can filter/select</i>)</p>	<p>The only definition of the claimed "attributes" in the instant specification is found on page 2, lines 7-10, "... attributes may include, for example, clock speed, processor type, number of processors, amount of memory, and hard drive space". Appellant uses open-ended language here and claims should not be limited to the few examples of attributes given.</p>
	<p>... upon receipt of a notification that a new attribute can be searched, dynamically update the set of attributes (<i>Column 10, lines 66-Column 11 lines 35 specifically disclose the ability to "dynamically generate data", e.g., the system, particularly the Network Management Server, to dynamically poll the network for changes in network device attributes, e.g., new attributes</i>)</p>	<p>A new attribute can be a simple a change in a previous attribute, e.g., a driver version has been upgraded or an OS version is updated. The specification does not preclude this interpretation of "new attribute". Polling is equated to the receipt of notification, since the polling of the inventory causes new attributes to be found and be able to be searched. Column 11, lines 18-35 disclose the ability of McCormack to "... provide a way for a filter mechanism to flexibly accommodate a variety of changing information" referring to</p>

		the changes to the attributes.
	...receiving a query from a requestor, wherein the query includes criteria (<i>Fig. 4A, element 412</i>)	
	...identifying a first group of devices, the attributes of which match the criteria (<i>Fig. 4A, element 414</i>)	
	... and return the first group to the requestor (<i>Fig. 4A, elements 416 and 418</i>)	
Claims 3, 16 and 23 dependent on Claims 1, 14 and 21, respectively	...further disclosing the set of attributes including a device/processor type (<i>Fig. 3, element 314</i>)	
Claims 4-8, 17-20 and 24-27 dependent on Claims 1, 14 and 21, respectively	...the first group (<i>Fig. 4A, element 412 and Fig. 3</i>) identifies a set of data processing systems (<i>Fig. 1, elements 118 show multiple processing devices</i>), where the filtering is used to update software (<i>Column 1, lines 25-35, indicates the desire of the network administrator to know the devices connected to the network without have to physically walk around to each one of the devices, clearly the administrator updates software/hardware for each of the network devices when necessary</i>); the requestor is indeed a software process, being a software user interface that a user inputs the desired criteria into, then the software user interface retrieves the devices with the inputted criteria (<i>Fig. 4</i>); the first group is generated using non-preexisting data (<i>Column 10, lines 66-Column 11 lines 10</i>); using meta-data to describe attributes within the set of attributes (<i>Abstract, Summary of Invention, and Column 4, lines 60+, use of Metadata table</i>).	"non-preexisting data" as defined in the specification of the instant application is simply data that did not exist in the database at one point in time. When an upgrade occurs, e.g., to the operating system of the device or a new device gets added to the network, the database in McCormack is updated to reflect these changes. McCormack does this by dynamically polling for new devices/changes that did not exist before in previous queries.
Claim 10, 12 and 13, dependent on claim 9	...the bus system is a single bus (<i>Fig. 6</i>), whole system has plurality of processors (<i>Fig. 6, element 604 and 624 and other network devices clearly have processors</i>), and the communication unit uses Ethernet (<i>Column 6, lines 25-25</i>).	

Claims 28-31, dependent on claim 1, 9, 14 and 21	...if the first group has been previous been generated (<i>a query already executed</i>), the query is pulled from storage (<i>Column 15, lines 25-35, "...the filter values are persistently stored in a database so that they can be later recalled and re-used."</i>) and if the group has not previous been generated, dynamically generating group (<i>clearly if query is new, will filter out current device information and generate group</i>)	
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(10) Response to Argument

Appellants response to argument are not commensurate with the scope of the claims. In the following paragraphs of the section, Examiner will respond to the Appellants arguments in the order that are presented in the Appeal Brief submitted 05/08/2006. The subject of the arguments centers upon Appellants disagreement over McCormack anticipation of the following limitation in the independent claims:

~~upon receipt of a notification that a new attribute can be searched, dynamically updating the set of attributes;~~

Issue 1

Appellant first argues on page 10 of Appeal Brief:

Looking first at the meaning of *attribute*, Merriam Webster online dictionary at m-w.com defines an *attribute* as an *inherent characteristic or an accidental quality*. Typical attributes of a computer system include clock speed, processor type, number of processors, amount of memory, and hard drive space, to name a few. A typical grouping request will specify one or more attributes and the desired values for those attributes. For example, the request might wish to search for systems in which the attribute *hard drive space* has a value of greater than 40 megabytes.

Examiners Response to Issue 1

Appellant attempts to define the word “attributes” by presenting extrinsic dictionary definition and language from the specification. Examiner asserts the prior art reference to McCormack **completely** meets the definition of “attributes” given in the claims, specification and the extrinsic dictionary definition. McCormack shows various types of attributes in Fig. 3, table 311, including device type and IOS version. Both of these are indeed “inherent characteristics” of a computing device and parallel the definition given in the appellants specification. It must be emphasized that appellant uses open-ended language in the specification when listing the examples of the attributes. Specifically, page 2, lines 8-10 of the appellants specification recites, “...These attributes **may include, for example**, clock speed, processor type, number of processors, amount of memory, and hard drive space”, emphasis added. Clearly, the Appellant did not intend to limit “attributes” to what is listed above. The ‘device type’ of McCormack is akin to “processor type” in the Appellant specification, where it gives some indication of the inherent characteristic of the device. The ‘IOS version’ of McCormack is the Input/Output System version and is also an inherent characteristic of the device. Both are completely in line with the definition of “attribute” and are usable as a search/filter field (Column 10, lines 35+ of McCormack).

Issue 2

Appellant next argues on page 11 of Appeal Brief:

In the excerpt cited above, a process periodically polls the devices in the system and collects, among other values, the value of the input/output system (IOS) version. However, it is known that in polling devices within a system, there are often a large number of items of information that one can request. Therefore, the polling device would not send a blanket request for all information, but instead sends a request for specific information, such as the IOS version number. Because of this requirement, McCormack needs to know beforehand the attributes whose values are desired.

Examiners Response to Issue 2

Appellant is arguing that the claim language requires new attributes to be reported when they become available without knowing, *a priori*, what exactly the new attributes are, and that this feature is not possible with the polling mechanism in McCormack because it is periodic and specific in nature. Examiner contends that this argument is not commensurate with the scope of the claim language. ***Nowhere in the claim language exists a limitation that dictates how the notification of a new attribute is generated.*** The only limitation that has anything to do with notification of a new attribute is what was already stated: “upon receipt of a notification that a new attribute can be searched, dynamically updating the set of attributes” (per the independent claims). ***Nowhere in this claim limitation dictates how the notification of a new attribute is generated.*** The limitation ***does not place any restriction*** on how the notification is generated, as long as some notification is received and causes the dynamic updating of the set of attributes. The limitation does not preclude polling

mechanisms since polling is what generates the notification, and again, there is simply no limitation regarding how the notification is generated in the claims. Therefore, the polling mechanism of McCormack fully anticipates this limitation. To reiterate how McCormack generates and receives the notification of a new attribute, McCormack has a device inventory polling process that periodically polls the network in which all the devices are connected. Based on the polling, each device returns attribute values such as IOS version values. If the IOS version value is new, e.g., there was an upgrade and the IOS version has changed, then IOS version attribute column (Fig. 3, element 316 of McCormack) is dynamically updated to enable one to search the new IOS version numbers. This is supported in Column 11, lines 4-35 of McCormack.

Issue 3

Appellant lastly argues on page 11 of Appeal Brief:

McCormack receives a new value for an existing attribute, but McCormack does not receive or add a new attribute. McCormack does not show or suggest that a new characteristic or attribute can be detected and added. Therefore this reference does not show the step "upon receipt of a notification that a new attribute can be searched, dynamically updating the set of attributes" and does not anticipate the invention recited in claim 1.

Furthermore, McCormack does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. The program disclosed in McCormack is considered "dynamic" in that it will pick up new values for the existing attributes, as opposed to receiving new attributes.

Examiners Response to Issue 3

Here Appellant is arguing a "new attribute" means a new attribute *category* as opposed to a new attribute *value*. Examiner believes the latter is fully commensurate with the scope of the claims. Looking at the claim language (using claim 1 as an

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example), the claim limitations start of with "...maintaining a set of attributes...". There is absolutely no further limitation as to ***whether the values of the attributes are maintained*** or ***whether the categories of attributes are maintained*** or ***whether some combination of categories and values of the attributes are maintained***.

Furthermore, there is not limitation as to what exactly constitutes a "set of attributes".

Under the broadest a reasonable interpretation of the claims in light of the specification, a "set of attributes" can be ***anything that involves the attributes***, including the category of attributes and values of the attributes themselves. The second limitation Appellant presents, is the limitation under contention: "upon receipt of a notification that a new attribute can be searched, dynamically updating the set of attributes". Given the above Examiners analysis of the first limitation, it is clear that a "new attribute" can mean a ***new attribute value*** that causes the set of attributes to be updated.

McCormack exactly anticipates this where a new IOS version value is found and the IOS version attribute category is updated (Column 11, lines 4-35; Fig. 3, element 316 is the IOS version attribute category, while '2.1' is an example of a new IOS version attribute value). If the appellant wishes to claim what appellant argues, the claim language should better distinguish between 'attribute category' and 'attribute value', using claim language such as "maintaining a *set of attribute categories*...upon receipt of a notification that a *new attribute category* can be searched...updating the *set of attribute categories*".

Even under the assumption that the current claim language ***strictly*** refers to the set of attribute 'categories', Examiner wishes to point out that McCormack is still

fully anticipatory of the claims. Referring to Column 12, lines 1-25, Examiner steps through the limitations claim 1 as an exemplary example:

...maintaining a set of attributes [categories] (*Column 12, lines 1-5, different columns of filter dialog in Fig. 3, elements 210 and 310 are the attribute categories*) relating to elements in data processing system (*device type, IOS version*), wherein a desired combination of the attributes in a plurality of possible combinations of the attributes is used to create a respective group of elements containing the respective desired combination of attributes (*Column 12, lines 5-10 state an example where **Device Type** is the search/filter attribute category. Here, values 7300 or 7500 are searched and all the network devices that have device type 7300 or 7500 are returned*);

...upon receipt of a notification that a new attribute [category] can be searched (*Column 12, lines 10-15 then state that the user subsequently notifies the filter dialog of a new attribute category **IOS Version**, and look for values 10.3 and 11.1*), dynamically updating the set of attributes (*Column 12, lines 10-15 states the filter mechanism now dynamically adjusts so that Device Type values 7300 or 7500 **AND** IOS software version 10.3 or 11.1 are searched/filtered*);

...receiving a query from a requestor wherein the query includes criteria (*Column 12, lines 15-20, filter mechanism applies user query with criteria values 7300 or 7500 and 10.3 and 11.1*);

...identifying a first group of devices, the attributes [categories] of which match the criteria and returning the first group to the requestor (*network devices are identified and returned based on criteria, Column 12, lines 20-25*).

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Alan S. Chen


6/26/06

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